



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FTI - 174047

PRELIMINARY RECITALS

Pursuant to a petition filed on May 4, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on July 27, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether petitioner's appeal is timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of California.
2. On March 7, 2011, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating her household was overissued FoodShare benefits in the amount of \$4,321.00 for the period of April 1, 2010, through March 31, 2011. (Exhibit R-2)

3. The agency sent Petitioner a repayment agreement on April 4, 2011. (Exhibit R-3)
4. The agency sent the Petitioner dunning notices (reminders about the debt) on May 3, 2011, June 2, 2011 and July 5, 2011. (Exhibit R-4)
5. On August 12, 2011, the agency sent the Petitioner a notice of State tax intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit R-1)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 4, 2016. (Exhibit P-1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

"All adult or emancipated minor food unit members at the time of the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household...The following are responsible for paying a claim...Each person who was an adult member of the household when the overpayment or trafficking occurred...." *FSH* §7.3.1.2; see also 7 CFR §273.11(a)(4)(i)

Based upon the foregoing regulations and policy, the Petitioner is liable for the underlying Foodshare overpayment. With regard to the underlying overpayment, the Petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's May 4, 2016, appeal was filed well beyond 90-days from the date of the Match 7, 2011 overpayment notice. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also untimely. A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the tax intercept notice was August 12, 2011. Petitioner did not file her appeal until more than four years had passed. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal of the state tax intercept.

The respondent sent all overpayment, dunning, and tax intercept notices to petitioner's last known address. Petitioner contends that she moved to California sometime in 2012. She testified that she was homeless before that, but was unable to provide any specificity as to the dates of her homelessness. She

contends that, as a result, she was not properly notified of the agency's claim and thus should be able to challenge it now.

I disagree, as there is no dispute that petitioner failed to report her move to California to the respondent agency. Furthermore, nothing in the record indicates that she ever informed the agency of this move. The agency sent all notices to the best address it had available. The petitioner did not receive them because she never reported the move. As a recipient of public benefits, the petitioner was obligated to inform the respondent of the change in address. I also note that petitioner testified that she did not move to California until 2012; all notices in this matter were mailed to petitioner in 2011. Because she had an opportunity for a hearing that she could not exercise because she failed to notify the agency about her address, she lost her opportunity to appeal the overpayment and does not get another opportunity to argue the validity of that action now.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. Petitioner's appeal of the State Tax Intercept is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed in its entirety.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

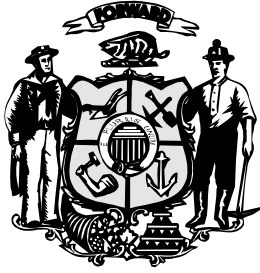
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of August, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 19, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit